

### **REMARKS**

Applicants have carefully reviewed the Final Office Action mailed April 4, 2011 (hereinafter “Final Office Action”), and respectfully request reconsideration of the subject application, particularly in view of the above amendments and the following remarks.

#### ***Status of the Claims***

Claims 10–12, 14, 17, and 20–28 were previously pending. Claims 1–9, 13, 15, 16, 18, and 19 were previously cancelled. Applicants have amended claim 10 to incorporate the limitations of former dependent claim 11, which has been cancelled herein. Since this amendment merely incorporates subject matter from claim 11, such amendment does not raise new issues that would require a new search, because the subject matter of claim 11 was previously searched. Moreover, this amendment does not raise the issue of new matter; rather, this amendment simplifies issues for appeal by reducing the number of claims on appeal. Therefore, Applicants respectfully request entry of such amendment. Claim 26 has been cancelled in view of the amendment to claim 10. Accordingly, claims 10, 12, 14, 17, and 20–28 are pending.

#### ***Rejection Under 35 U.S.C. § 103(a) – Joseph and Bahl***

Claims 10–12, 14, 17, and 20–28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,966,003 B1 to Joseph et al. (hereinafter “Joseph”) in view of U.S. Patent No. 7,020,464 B2 to Bahl et al. (hereinafter “Bahl”). Applicants respectfully traverse. When determining whether a claim is obvious, an Examiner must make “a searching comparison of the claimed invention—including all its limitations—with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418, 82 U.S.P.Q.2d (BNA) 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

Applicants' claim 10, as amended, relates to an embodiment wherein a secure connection between a first network element and a second network element is established, and in response to detecting failure of the second network element, the second network element is replaced with the third network element, wherein the same secure network connection which was used between the first network element and the second network element is used between the first network element and the third network element. In other words, no new secure network connection between the first network element and the third network element is established. Moreover, the third network element sends a secure message to the first network element notifying the first network element that the secure connection will be taken over by the third network element. Among other features, this allows the first network element to address subsequent messages to the third network element rather than the second network element.

Neither Joseph nor Bahl, alone or in combination, teaches or suggests this combination of features. The Patent Office asserts that Joseph discloses the features of detecting failure of a second network element; in response, replacing the second network element with a third network element; and using the same secure connection (Final Office Action, pages 2–3). Applicants respectfully disagree with this interpretation for at least the following reasons. First, regarding terminology, Applicants note that Joseph never uses the term “connection.” However, Joseph does use the term “secure communication,” and Applicants believe that the Patent Office assumes the terms “secure connection,” as recited by Applicants, and “secure communication,” as recited by Joseph, are the same. While it is not clear to Applicants that this is so, for the purposes of this Response, Applicants will assume that this is the Patent Office's intent.

Joseph, at column 4, line 58 – column 5, line 17, discloses that it may be determined that a “first communication” between a first network device and third network device has failed. In response, a “second communication” between the first network device and the third network device is established. Thus, Joseph explicitly states that the first communication is not used between the first network device and the second network device. If, as the Patent Office appears to assert, the “communications” discussed in Joseph are analogous to Applicants' recited “secure connection,” it is quite clear that Joseph does not disclose using the same secure connection between the first device and the third device, because Joseph explicitly discloses that a “second communication ... between the first and third network devices ... is established” (Joseph, column 4, lines 63–65). Joseph emphasizes this by disclosing that “the transition from the first

communication to the second communication will occur transparently...” (Joseph, column 5, lines 12–13; emphasis added). Applicants submit that a “transition” (transparent or not) is not necessary if the same secure connection is utilized. In contrast, Applicants’ claim 10 explicitly recites that the second network element is replaced with the third network element “*in the secure network connection with the first network element*” (emphasis added).

In addition to this distinction between Joseph and Applicants’ claim 10, Applicants’ claim 10, as amended, recites that upon replacing the second network element with the third network element, at least one secure message is sent from the third network element to the first network element to notify the first network element that the secure network connection will be taken over by the third network element. Neither Joseph nor Bahl teaches this feature. In the Final Office Action, regarding this limitation when addressing former claim 11, the Patent Office asserted that this feature is disclosed by the “second communication” discussed above (Final Office Action, pages 3–4). However, as discussed above, Joseph uses the phrase “communication” to mean something similar to a conversation, or perhaps to a “connection.” Therefore, the disclosure of a “second communication” does not refer to any particular message, nor does Joseph otherwise suggest that the third network device “[sends] *at least one secure message from the third network element to the first network element to notify the first network element that the secure network connection will be taken over by the third network element*” (emphasis added), as recited in Applicants’ claim 10. In particular, nowhere does Joseph teach or suggest that the third device notifies the first device that the third device is taking over a connection/communication.

Moreover, a closer examination of Joseph suggests that the first network device is not only not notified by the third network device that the third network device is taking over for the second network device, but that it is not even aware of the third network device. In particular, Joseph discloses that a switch 54 routes traffic between the first network device (a device on an egress network 42 such as a phone) and a second network device (a blade 52). Upon failure of the blade 52, traffic from the egress network 42 is “redirected” to the standby blade 52’ (Joseph, column 7, lines 27–47). Applicants submit that if traffic is “redirected,” then clearly the device on the egress network 42 is not even aware of the standby blade 52’—otherwise, the device on the egress network 42 would direct subsequent traffic to the standby blade 52’, and traffic would not need to be redirected. Clearly, the standby blade 52’ is not “*sending at least one secure*

*message...to the first network element to notify the first network element that the secure network connection will be taken over"* by the standby blade 52'. For at least the foregoing reasons, Applicants submit that claim 10 is allowable over the cited references.

Applicants' claim 12 recites certain features that are analogous to those discussed herein with regard to claim 10, and Applicants' arguments above are equally applicable with regard to claim 12. In particular, claim 12 recites that a first security gateway is *"taking over the secure network connection"* between a second security gateway and a network device. As discussed above, Joseph discloses the use of two separate and distinct communications, not an ability to utilize the same secure connection. Claim 12 also recites that the first security gateway sends *"a message to the network device that the first security gateway is taking over the secure network connection."* As discussed above, Joseph fails to teach or suggest that the standby blade 52' sends a message to the egress network that the standby blade 52' is *"taking over the secure network connection."* Instead, Joseph discloses a different process wherein traffic directed toward the failed blade is redirected by a switch to the standby blade 52'. For at least the foregoing reasons, Applicants submit that claim 12 is allowable over the cited references. Claim 22 is a server embodiment of claim 12 and contains limitations analogous to those discussed herein with regard to claim 12. Therefore, claim 22 should be allowable for the same reasons discussed with regard to claim 12.

Claims 20, 21, 23, 26, and 27 depend from claim 10, and should therefore be allowable as depending from an allowable independent claim. Claim 25 depends from claim 12, and should therefore be allowable as depending from an allowable independent claim. Claims 14, 17, 24, and 28 depend from claim 22, and should therefore be allowable as depending from an allowable independent claim.

### ***Conclusion***

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicants' representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read 'E. Jensen', with a long horizontal flourish extending to the right.

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